

The below described is **SIGNED**.

Dated: April 28, 2006

Glen E. Clark

GLEN E. CLARK
U.S. Bankruptcy Judge



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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

FILED IN THE
UNITED STATES
BANKRUPTCY COURT
DISTRICT OF UTAH
Mar 16 12 17 PM '06

In re DAVID E. BLACK,

Debtor,

Case No. 05-23388 GEC

Chapter 7

JANALL BLACK,

Plaintiff,

v.

DAVID E. BLACK,

Debtor.

Adversary Proceeding No.05P 2268GEC

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come before the court on February 6, 2006 at a trial held before

Judge Glen E. Clark; and Christina L. Micken having appeared as counsel for plaintiff and Brent E. Johns having appeared as counsel for defendant; the Court makes the following Findings of Fact and Conclusions of law in this matter:

1. At the time of the divorce, the parties had two minor children and their income was roughly equal. This is a dispute only with respect to the debtor's obligation to pay the home equity loan under the Decree of Divorce. There is no dispute as to the debtor's obligation to pay one half of the medical expenses of the minor children and there is no dispute as to his obligation to pay child support.

2. The Tenth Circuit Court of Appeals of the United States has stated the law clearly in In Re Merrill, 246 B.R. 906 (Bankr. N.D. Okla. 2000). The critical question in determining whether a debt serves the function of support may be determined by looking at the financial situation of the parties at the time of the divorce. The current incomes of the parties are irrelevant. In In Re Yeates, 807 F.2d 874 (10th Cir. 1986), the Court states that incomes must be ascertained at the time that the agreement was entered into. In Sylvester v. Sylvester 865 F.2d 1164 (10th Cir. 1986), the court states that a bankruptcy court is not supposed to inquire into the parties' current financial obligations, but rather the circumstances as they existed at the time. In In re Robinson 961 F. 2d 252 (10th Cir. 1990), the 10th circuit found that a former wife's refinance of a trust deed did not eliminate the husband's obligation to continue to make payments on that obligations pursuant to the Decree of Divorce.

3. In this case the plaintiff did get further advances post decree which is her obligation and not the obligation of the debtor. There has been testimony that debt has been satisfied and that the debtor's obligation has been unaffected by the refinance or post decree advances.

4. The Court asked the debtor if he had agreed to pay the debt in question to assist the

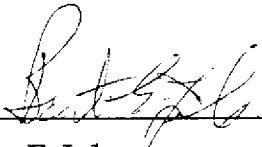
plaintiff with her and the children's support and he said that he had agreed to pay the debt.

5. The debtor's obligation under the Decree of Divorce to pay the home equity loan is in the nature of support and maintenance and is nondischargable.

DATED this _____ day of _____, 2006.

United States Bankruptcy Judge

APPROVED AS TO FORM:



Brent E. Johns

CERTIFICATE OF DELIVERY

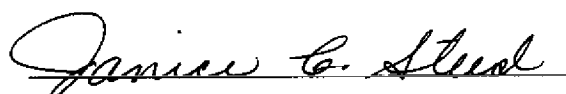
I hereby certify that on this 8th day of March, 2006, I delivered a true and correct copy of the foregoing Findings of Fact and Conclusions of Law to the following:

☒ Via Mail (Postage Pre-paid)

☐ Via Fax

☐ Via Hand Delivery

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Janice C. Stead